

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

July 2, 2002

LEGEND

X =

State =

d1 =

Dear :

This letter responds to a letter, dated February 21, 2002, written by your authorized representative on behalf of X, requesting an extension of time for X to elect to be treated as an association taxable as a corporation under § 301.7701-3 of the Procedure and Administration Regulations.

FACTS

According to the information submitted, X was formed as a State limited liability company (LLC) on d1. X has more than one member and intended to elect to be treated as an S corporation effective d1. X timely filed a Form 2553, Election by a Small Business Corporation, but inadvertently failed to timely file a Form 8832, Entity Classification Election.

LAW AND ANALYSIS

Section 1361(a) of the Internal Revenue Code defines an S corporation as a small business corporation for which an election under § 1362(a) is in effect. In order to qualify as a small business corporation under § 1361(a), an entity must be a domestic corporation. See § 1361(b).

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8), (an eligible entity) can elect its classification for federal tax purposes. If an eligible entity has more than one owner, it can elect to be classified as either a partnership or a corporation. Section 301.7701-3(b)(1)(i) provides the default rule that a domestic eligible entity with more than one member is classified as a partnership unless it elects to be a corporation.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832, with the applicable service center. To be valid, an election must generally be signed by each member of the electing entity, or any officer, manager, or member of the electing entity who is authorized (under local law or the entity's organizational documents) to make the election and who represents to having such authorization under penalties of perjury. See § 301.7701-3(c)(2)(i).

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extension(s) of time for making certain elections but does not apply to elections under § 301.9100-3. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

CONCLUSIONS

Based solely on the facts submitted and the representations made, we find that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to make an election to be treated as association taxable as a corporation for federal tax purposes effective d1. X should make the election by filing a properly executed Form 8832 and attaching a copy of this letter to the election. A copy is enclosed for that purpose. Assuming X's election to be treated as a corporation is effective, and X is otherwise qualified to be classified as an S corporation, X's previously filed election to be treated as an S corporation will be effective d1.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

/s/

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes